IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 19249 of 2006(N)

PETITIONER:

SMT.JERLY, D/O.P.C. JOSEPH,
AGED 43 YEARS, PANAKKAL HOUSE,
WOMEN'S CLUB ROAD, CHEMBUKKAVU POST,
THRISSUR, KERALA.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:

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1. STATE OF KERALA, SECRETARY TO GOVERNMENT
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. A.I. JAMES, S/O. ATTOP. I.,
WORKING IN CORP.BANK HOMES, JALITTA TOWERS,
NO.21/2, MISSON ROAD, BANGALORE-560 027.

BY ADV. SRI.T.M.CHANDRAN
GOVERNMENT PLEADER SMT.LATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.19249 of 2006

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE M.C.NO.32/5 PENDING BEFORE THE FAMILY COURT, THRISSUR FILED BY THE PETITIONER DATED 28/1/2005.

EXT.P2:- TRUE COPY OF THE O.P.NO.115/05 DATED 28/1/2005 PENDING BEFORE THE FAMILY COURT, THRISSUR.

EXT.P3:- TRUE COPY OF THE O.P.NO.458/05 DATED 2/5/2005 FILED BY THE 2ND RESPONDENT BEFORE THE FAMILY COURT, THRISSUR.

EXT.P4:- TRUE COPY OF LAWYER NOTICE DATED 5/5/2005 SENT ON BEHALF OF 2ND RESPONDENT.

EXT.P5:- TRUE COPY OF THE REPLY NOTICE SENT BY THE PETITIONER DATED 16/5/2005 TO THE 2ND RESPONDENT.

EXT.P6:- TRUE COPY OF THE COMPLAINT IN C.C.NO.22836/05 FILED BY THE 2ND RESPONDENT BEFORE THE 13TH ADDL.CHIEF JUDICIAL METROPOLITAN MAGISTRATE COURT, BANGALORE AGAINST THE PETITIONER DATED 20/6/2005.

RESPONDENT'S EXHIBITS:-

EXT.R2a:- TRUE COPY OF PLAINT DATED 12/5/2005 IN O.P.506/2005 BEFORE FAMILY COURT, TRICHUR.

EXT.R2b:- TRUE COPY OF INJUNCTION ORDER IN I.A.NO.1427/2005 DATED 18/7/2005 FAMILY COURT, TRICHUR.

[TRUE COPY]

R.BASANT, J

W.P.C.No.19249 of 2006

Dated this the 18th day of January 2007

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Her husband/second respondent herein is the complainant. There is acrimony in the marriage. The respondent/complainant is employed as a Bank Manager in Bangalore. He alleged that the cheque was issued to him by the petitioner for the due discharge of a legally enforcible debt/liability. I have been taken through the averments in Ext.P6. There is no specific recital as to the place where the cheque was handed over. The cheque was admittedly presented for encashment at the place where the petitioner is employed as a Bank Manager, that is Banagalore. The account is maintained by the petitioner at the Tripunithura branch of the Federal Bank. The cheque was dishonoured on the ground of insufficiency of funds. The respondent/complainant initiated proceedings before the court at Bangalore. The petitioner has come to this court with the prayer for quashing the proceedings initiated before the court at Bangalore.

According to her, the court at Bangalore has no territorial jurisdiction to entertain the complaint. She further submits that continuation of the proceedings at Bangalore workes out great prejudice, hardship and injustice to the petitioner in as much as she is permanently residing in Kerala and has never been to Bangalore. It is, in these circumstances, that the prayer is made to quash the proceedings.

2. On the question of territorial jurisdiction of the criminal court to entertain the complaint under Section 138 of the Negotiable Instruments Act, we have the decision of the Supreme Court in Bhaskaran v. Balan [1999(3) KLT 440]. The question was considered in detail in that case. It is settled and is beyond controversy now that the court within the jurisdiction of which any of the five crucial acts namely

(i) drawing of the cheque

(ii) Presentation of the cheque to the bank

(iii) Return of the cheque unpaid by the drawee bank

(iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and

(v) failure of the drawer to make the payment

takes place, the complaint under Section 138 of the Negotiable Instruments Act can be entertained.

3. Con catenation of the above events is necessary to justify the launching of the prosecution under Section 138 of the Negotiable Instruments Act and it is now trite and this court is bound by the decision in Bhaskaran v. Balan [1999(3) KLT 440] that the courts at any of these five places can entertain a complaint under Section 138 of the Negotiable Instruments Act. In these circumstances, notwithstanding the fact that the sequence of events in this case suggest to the court that it may be harsh and difficult for the petitioner to defend the prosecution against her at Bangalore, it cannot be held in the light of the decision referred above that the court at Bangalore has no territorial jurisdiction to entertain the complaint.

4. In the light of that finding, it is unnecessary now to consider whether this court has jurisdiction to quash the proceedings pending before the court within the jurisdiction of the High Court of Karnataka in the light of the dictum in Musaraf Hossain Khan v. Bhagheeratha Engg.Ltd[2006(2) KLT 525(SC)].

5. In the result, this writ petition is dismissed. I may hasten to observe that the dismissal of this writ petition will not in any way fetter the rights/liberty of the petitioner to raise all appropriate contentions in the proceedings pending before the learned Magistrate of Bangalore and also to seek transfer of the case to any other court. Needless to say, her right/liberty to move the High Court of Karnataka for quashing of proceedings shall also remain unfettered by this order.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006